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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 JAMES EMMETT FARR,
12 CDCR #T-51954,

13 Plaintiff,

14 vs.

15 WARDEN DANIEL PARAMO, et al.,

16 Defendants.

Case No.: 16-CV-1279 JLS (MLB)

**ORDER DISMISSING DEFENDANT
STOUT PURSUANT TO FED. R.
CIV. P. 4(m)**

17 Plaintiff James Emmett Farr, currently incarcerated at California State Prison – Los
18 Angeles County and proceeding pro se, filed a civil rights action against prison officials at
19 Richard J. Donovan Correctional Facility (“RJD”) on May 27, 2016.

20 **BACKGROUND**

21 On May 27, 2016, Plaintiff filed a Complaint (“Compl.,” ECF No. 1) pursuant to 42
22 U.S.C. § 1983, in which he alleged constitutional violations by Defendants Paramo,
23 Hernandez, Fink, Ramrakha, Amaro, Barnard, Ramirez, Savala, Soto, Stout, and Wall. *See*
24 Compl. at 1, 8. On January 13, 2017, the Court granted Plaintiff’s request for the United
25 States Marshals Service (“USMS”) to effect service of his Complaint on the named
26 Defendants. *See* ECF No. 11.

27 On March 29, 2017, Defendants Hernandez, Fink, Barnard, Amaro, Ramirez,
28 Paramo, Ramrakha, and Savala moved to dismiss portions of Plaintiff’s Complaint

1 pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* ECF No. 30. On August 18,
2 2017, Magistrate Judge Mitchell D. Dembin issued a report and recommendation in which
3 he recommended dismissal of: (1) all Eighth Amendment claims against Defendants
4 Amaraao and Fink; (2) the Fourteenth Amendment, First Amendment retaliation, and
5 generalized conspiracy claims as to all Defendants; (3) all claims against Defendant
6 Paramo; and (4) the Eighth Amendment failure-to-protect claims as to all Defendants. *See*
7 ECF No. 35. On December 18, 2017, this Court adopted this report and recommendation
8 in its entirety. *See* ECF No. 44.

9 Plaintiff later requested, and was granted, leave to file an amended complaint no
10 later than April 5, 2018. *See* ECF Nos. 46, 52. Plaintiff, however, chose not to file an
11 amended pleading; consequently, the original Complaint filed by Plaintiff remained the
12 operative pleading.

13 On April 19, 2018, Defendants Soto and Wall filed a motion to dismiss the claim
14 against them pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* ECF No. 55.
15 Magistrate Judge Dembin issued a report and recommendation in which he recommended
16 that their motion be granted and all claims against them be dismissed with prejudice. *See*
17 ECF No. 57. The Court adopted this recommendation on October 17, 2018, and dismissed
18 Defendants Soto and Wall from this action.

19 The remaining Defendants who properly had been served with the Plaintiff's
20 Complaint—Defendants Barnard, Hernandez, and Ramrakha—filed an Answer to the one
21 remaining claim, Plaintiff's Eighth Amendment excessive force claim. *See* ECF No. 59.
22 On July 26, 2019, Defendants Barnard, Hernandez, and Ramrakha filed a motion for
23 summary judgment pursuant to Federal Rule of Civil Procedure 56. *See* ECF No. 73.

24 On December 9, 2019, the Court granted Defendants' motion for summary judgment
25 and issued an Order to show cause ("OSC") why Defendant Stout should not be dismissed
26 for want of prosecution pursuant to Federal Rule of Civil Procedure 4(m). ECF No. 97 at
27 20. The Court informed Plaintiff that, if he wished to proceed with his claims against
28 Defendant Stout, he needed to file proof of proper service on Defendant Stout within thirty

1 days; otherwise, the Court would dismiss Defendant Stout without prejudice. *Id.* at 20, 21.
2 More than sixty days have passed, and Plaintiff has not provided a proof of service showing
3 that Defendant Stout has been properly served or filed a motion seeking an extension of
4 time to serve Defendant Stout.

5 ANALYSIS

6 Rule 4 of the Federal Rules of Civil Procedure provides:

7 [i]f a defendant is not served within 90 days after the complaint
8 is filed, the court—on motion or on its own after notice to the
9 plaintiff—must dismiss the action without prejudice against that
10 defendant or order that service be made within a specified time.
11 But if the plaintiff shows good cause for the failure, the court
must extend the time for service for an appropriate period.

12 Fed. R. Civ. P. 4(m). “In the absence of service of process (or waiver of service by the
13 defendant) . . . a court ordinarily may not exercise power over a party the complaint names
14 as a defendant.” *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350
15 (1999); *Crowley v. Bannister*, 734 F.3d 967, 974–75 (9th Cir. 2013) (“A federal court is
16 without personal jurisdiction over a defendant unless the defendant has been served in
17 accordance with Fed. R. Civ. P. 4.”) (citations omitted).

18 The initial ninety days provided by Rule 4(m) to effect service on Defendant Stout
19 has long since passed in this case, yet a review of the Court’s docket indicates that he has
20 yet to be served. *See* Fed. R. Civ. P. 4(l)(1) (“[P]roof of service must be made to the
21 court.”); S.D. Cal. CivLR 5.2; *Walker v. Sumner*, 14 F.3d 1415, 1421–22 (9th Cir. 1994)
22 (holding that where a pro se plaintiff fails to provide the Marshal with sufficient
23 information to effect service, the court’s *sua sponte* dismissal of those unserved defendants
24 is appropriate under Rule 4(m)). The district court may not *sua sponte* dismiss a complaint
25 for lack of service, however, “without first giving notice to the plaintiff and providing an
26 opportunity for him to show good cause for the failure to effect timely service.” *Crowley*,
27 734 F.3d at 975 (citation omitted). Indeed, the district court has broad discretion under

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1 Rule 4(m) to extend time for service upon a showing of good cause even after the service
2 period has expired. *See Mann v. Am. Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003).

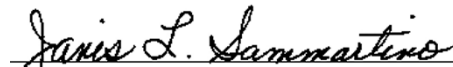
3 Here, the Court provided Plaintiff notice, along with an additional thirty days to
4 serve Defendant Stout, and gave Plaintiff the opportunity to show good cause as to why he
5 failed properly to serve Defendant Stout. Plaintiff, however, has not responded to the
6 Court's Order by either filing a proof of service or seeking additional time to serve
7 Defendant Stout. Further, Plaintiff has failed to file any response at all to the Court's OSC
8 explaining his failure timely to serve Defendant Stout. The Court therefore concludes that
9 dismissal without prejudice pursuant to Rule 4(m) is appropriate.

10 CONCLUSION

11 In light of the foregoing, the Court **DISMISSES WITHOUT PREJUDICE**
12 Defendant Stout from this action for failure to effect service pursuant to Federal Rule of
13 Civil Procedure 4(m). The Clerk of Court **SHALL TERMINATE** Defendant Stout from
14 the Court's docket and, because Defendant Stout was the sole remaining Defendant in this
15 action, the Clerk of Court **SHALL CLOSE** the file.

16 **IT IS SO ORDERED.**

17
18 Dated: February 20, 2020


Hon. Janis L. Sammartino
United States District Judge